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CURRENT TOPICS

Law of Charitable Trusts: Inquiry

A DEPUTATION from the National Council of Social Services, on 25th November, was informed by the LORD PRESIDENT OF THE COUNCIL that the Prime Minister is to appoint a committee to inquire into the law relating to charitable trusts in England and Wales. The deputation, led by LORD SAMUEL, put the case for an inquiry and referred in particular to the problem of obsolescent charities and the desirability of establishing "common good" funds, and of making dormant funds available for voluntary organisations. The Lord President said that the committee would be able to deal with the question of "common good" funds, but that of dormant funds raised different issues, which would not be appropriate for the committee. On behalf of the Government he promised that the matter would be investigated without delay, and that the National Council of Social Service would be brought into consultation.

War-Damage Claims

THAT there are many genuine war-damage claims which cannot as the law stands be paid is a commonplace to solicitors dealing with such matters. In some cases notification was sent to the wrong authority and in others unavoidable absence on active service or elsewhere prevented notification. Eighty-four members of Parliament have tabled a motion calling upon the Government "to provide some method of appeal for such persons as have genuine war-damage claims but whose claims have been rejected by the War Damage Commission solely on the ground that the damage was notified too late." A private member's Bill, the War Damage (Amendment) Bill, which was given an unopposed second reading and passed through a standing committee without division or amendment, proposed that the Treasury should be given discretion, in particular cases, to extend the limit of time for notifying war-damage claims to the War Damage Commission. Unfortunately this Bill cannot be passed in the present session because it did not leave standing committee in time to be dealt with on those days allotted for the concluding stages for private members' Bills.

War Damage (Public Utility Undertakings, etc.) Act, 1949

THE War Damage Commission have announced the procedure for making claims in respect of war damage to the land and buildings of certain classes of undertakings under the War Damage (Public Utility Undertakings, etc.) Act, 1949, other than the fixed global payments for the settlement of claims by the public utility undertakings scheduled in the Act. This Act remits to the principal Act of 1943, to be dealt with by the War Damage Commission, claims by specified classes of undertakings. Claims by these undertakings should be made to the appropriate regional office of the War Damage Commission. The War Damage (Remitted Claims) Regulations, 1949 (S.I. 1949 No. 2019), make it a condition of the acceptance of such claims that the damage shall have been notified to the War Damage Commission by 4th May, 1950, unless it has already been notified to the Commission or to another Government department. It is important, therefore, that unless confirmation has been received by the undertaking of the receipt of a previous notification, any past damage should be notified to the Commission on Form C.1 as soon as possible, and in any case not later than 4th May, 1950. Should there be any further incidents of damage (for example, delayed explosion of bombs dropped during the war) notification should be made within thirty days of the occurrence of the further damage. Forms of notification (C.1) and claim can be obtained from any of the Commission's offices. The Act also provides that claims in respect of war damage to land and buildings in the following classes may be made to the Commission: (i) properties occupied by public utility undertakings on tenancies which do not constitute a proprietary interest; (ii) claims in respect of properties held from public utility undertakings on tenancies which constitute a proprietary interest, i.e., a tenancy for a term of more than seven years, unless the tenant is himself a public utility undertaking; (iii) claims in special cases by tenants of public utility undertakings whose tenancies did not constitute a proprietary interest, in respect of articles, structures or buildings which they had the right to remove or could be required to remove at the end of the tenancies. The same conditions apply to these claims, and unless notifications of damage have already been made to the Commission, or to another Government department, they should be made to the Commission as soon as possible.

The County Court Districts Order, 1949

ONLY a fortnight ago we recorded (p. 716, *ante*) the making of orders consolidating the various orders relating to county courts having bankruptcy, companies winding-up and Admiralty jurisdiction. On 1st December the County Court Districts Order, 1949 (S.I. 1949 No. 2058; H.M.S.O., 5s. 6d. net), came into force and superseded the orders of 1899 and 1938, as amended. In a schedule of nearly 250 pages are set out the detailed areas of every county court district in England and Wales, so that it is now possible to find in one handy volume information previously contained in no less than twenty-nine different orders.

THE FAILURE OF THE TOWN AND COUNTRY PLANNING ACT, 1947

In an article at p. 669, *ante*, your contributor R. N. D. H. examined the shortcomings of the Town and Country Planning Act, 1947. In general he came to the conclusion that all was well with the Act so far as its planning provisions go. On the other hand, as much could not be said for the nationalisation of development values which the Act effected. Although your contributor, in making proposals for modification, boldly refers to the abolition of development charges, in fact his own suggestions are mere palliatives; the system of charging is to be retained under another name, but the charge is to be limited to the amount received as compensation from the £300,000,000.

This attitude—that the planning provisions of the Act are good, but the financial ones unsatisfactory—is gaining acceptance amongst professional planners. In the September-October issue of the *Journal of the Town Planning Institute*, the institute's president for the year, Mr. James Adams, who is the planning officer for the county of Kent, puts the matter in this way:

> "the Act is not working and is highly unpopular even with many persons who are not anti-planning in principle. As a generalisation it can be said that the 'development rights' provisions are under severe attack, while the 'planning' provisions are accepted as broadly sound."

More recently Mr. B. J. Collins, Middlesex County Council planning officer, was quoted as saying to the Town and Country Planning Association (9th November) that development charges at reduced rates should be conceded to encourage development in appropriate places which fitted in with town plans. It will also be in the mind of many that Mr. W. S. Morrison, M.P., at the Conservative Party's Annual Conference, inveighed against the State monopoly in development values created by the 1947 Act. It was, he averred, repressing and discouraging development, and forcing up housing costs.

The financial provisions in the Act are the easiest to criticise because there seems little doubt that at present the development charge system is not working. Developers are frustrated because the charges are unevenly assessed and often very severe. Planning authorities are hindered in their efforts to direct private development to the correct locations because land is not to be bought anywhere except at the old building value price. The country is losing because the fear of development charge is sometimes stopping development proposals coming to fruition. It is hard in fact to find anyone who to-day will say a good word for the system which was once seen as the panacea for all the maladies which beset planning. Even the Lords have joined in the general hue and cry. In the debate in the Upper House, on 17th November, many noble lords rose to point to glaring injustices in the Act, particularly over development charges, and to cite instances where development had been delayed or even abandoned. One may, of course, adopt the sanguine view that when owners have received their compensation from the £300,000,000 they will be willing both to sell their land for development at existing use value and to pay development charges of 100 per cent. of the development value in the land. For unless both these things happen in substantial measure, the nationalisation of development values will not achieve its purpose. One need not be pessimistic, however, to point out the difficulties of ensuring that land is freely available for sale at existing use value, without a much wider use being made of compulsory powers than has been contemplated hitherto.

Even if the owner, having received compensation, is willing to sell his land at its existing use value, how can he do so if there are several prospective purchasers? None of the prospective purchasers will want the land for what it is, but for its development possibilities. They can hardly bid in competition with each other for the one thing that none of them wants—the existing use value.

It seems almost certain that they will disregard the oft-repeated advice of the Central Land Board, and start bidding in competition for what they *do* want, i.e., the development rights, and will almost certainly pay more than strict existing use value. This process is almost inevitable, human nature being what it is, and must lead to the forcing up of development costs. At the risk of making a shallow judgment on a very deep and difficult subject, one may suggest that the development charge system and the nationalisation of development rights have taken account of everything except human nature. We must either go forward from our present typical compromise to full nationalisation of the land or back to a free market and some other solution to the problems of compensation and betterment. It may be possible to stop short of full nationalisation if the State is prepared to allocate available building land to persons willing to carry out suitable development and on payment of strict existing use value to the owner. But our present halfway house methods seem to have brought the worst of both worlds.

Serious doubts about the financial provisions of the Act should not, however, blind us to the fact that at least one radical criticism can and should be made of the planning control provisions themselves.

The student of jurisprudence is well aware of the concept that one of the disadvantages of a system of law is its inability to keep pace with the changing needs of society. The law relating to town and country planning since 1932 amply illustrates the truth of this. During the 'thirties there was an immense amount of private building, much of it ill-directed. Yet the only town planning Act in existence before the war (the Town and Country Planning Act, 1932) was an adoptive Act. Even in 1943 there were some 22 per cent. of local authorities in England (63 per cent. in Wales) who had no form of planning control. It is true that in 1935 an Act was passed to check the evils of ribbon development. The problem was viewed, however, as a highway one—the restricting of means of access to classified roads. The Act of 1935 did not stop ribbon development. In many cases it merely ensured that the ribbon was a wider one owing to the insistence by the highway authority on the creation of what was called a service road on each side of the classified road. This is not the place to explain in detail the fact that the Town and Country Planning Act, 1932, had no "teeth," and that, even where it had been adopted, the disregard of its provisions was not accompanied by any effective sanction. What was required during this period? The answer is the planning control provisions of the Town and Country Planning Act, 1947, in broad outline. Many of these had already been foreshadowed in the war-time Act, the Town and Country Planning (Interim Development) Act, 1943.

What then is the vital shortcoming of the 1947 Act? It is that Parliament has set up an elaborate machine for controlling private development at a time when private building has almost ceased, and has neglected to provide any effective means of scrutiny or control of public building. Nearly every section in the planning control provisions of the 1947 Act is aimed at the private developer, whose activities to-day are of almost negligible proportions. It can hardly be doubted that we have moved into an era when the State, in one shape or another, is to be the principal builder, landowner and developer. Whether this era will be long or short is a question to defeat the ablest prophet; but one may doubt whether anyone seriously expects a complete reversal of present trends whatever the result of the General Election, or indeed in the foreseeable future. The considerable areas of war damage, of obsolete layout and of slum property predicate State activity for some time to come. Yet in these circumstances the 1947 Act makes but the scantiest provision for the control of the various agencies through which development may take place.

Briefly, the position is this: Government departments are practically free from the provisions of the Act (see s. 87). The Minister of Health, for example, who now owns so many hospitals, clinics, nurses' homes, etc., may, as a matter of grace, submit his proposals to the local planning authority or a regional office of the Ministry of Town and Country Planning, but he is not bound by law to listen to what they say. Statutory undertakers and local authorities who are not planning authorities are not in so exalted a position. In some cases they may have to submit a matter to the local planning authority for decision. In most cases, however, they prefer to operate the procedure under s. 35 of the Act and the regulations made thereunder. They are then only bound to obtain the *observations* of the local planning authority before submitting the matter for authorisation to the Government department concerned with their particular function. A housing authority would thus obtain planning clearance from the Minister of Health; the electricity authority would go to the Minister of Fuel and Power, and so on. County councils and county boroughs who are themselves planning authorities adopt this same method in respect of their own building proposals, sending up their own proposals with their own planning observations on them. Not infrequently these observations are of a favourable character.

It may, of course, be argued that these agencies are so well educated in the needs of planning that machinery of control is unnecessary. This is not the opinion of many of those best qualified to judge. Mr. Collins, in the speech previously quoted, said:—

> "Private enterprise regards town planning as a bar and a hindrance to its aspirations, and public enterprise regards it as an obstacle against which it is appropriate to plead exceptional circumstances on any and every occasion. At present there seem to be too many Ministries which pay lip-service to town planning, but which either are not prepared to plan their territorial work ahead or else insist that their own projects must rise superior to town planning interests."

The truth of this can hardly be challenged. The plain fact is that many local authorities, statutory undertakers and Government departments, when confronted with the sort of problems which private developers know all about in the years before the war, have made the same wrong choices from a planning point of view as the private developer did. If a borough council is being pressed to get houses up quickly, it is natural for it to resent the suggestions of the county council as planning authority. It is natural that it should wish to take the matter to the Ministry of Health for a "deemed planning permission" if the planning authority's views stand in the way of houses. It was no special wickedness on the part of the private builder that led him to adopt ribbon development. It was the saving to his pocket. Similar practical considerations motivate Government departments, public boards and local authorities when they are asked to adopt on planning grounds some method of approach which will involve additional trouble, time or expense.

We quote only one example, from the *British Housing and Planning Review* for October-November, 1949, reporting a paper by the treasurer of a housing authority. After considering the high cost of building, the following is placed at the head of the list of suggested remedies:—

> "(i) To endeavour to find sites on existing roads and where other services can be provided at low cost."

This was exactly what the private developer did in the pre-war years and it was called ribbon development.

The tragic shortcoming of the 1947 Act is that it does nothing to control the real threat to a properly planned town and countryside—the threat from the activities of the State itself. It bolts and bars the stable door on the private developer, but the horse has gone.

J. K. B.

EXCHANGE CONTROL BY FOREIGN LEGISLATION

THE uncomfortable process of eating his words becomes less distasteful for the legal commentator when the radiated warmth of argument and decision in the ultimate appeal court is available for the culinary preparation of the utterances in question, thus enhancing the digestible properties of the subject-matter. In a recent article (*ante*, p. 413) a contrast was drawn between the opposite results of two cases concerned with Czecho-Slovak exchange control restrictions. Before that article was in print the House of Lords had begun the hearing of appeals in both cases, and the decisions now reported demolish at a blow the supposed contrast so far as the practical outcome of the litigation in each case is concerned. Both in *Kahler* v. *Midland Bank, Ltd.* [1949] 2 All E.R. 621, and *Zivnostenska Banka* v. *Frankman, ibid.*, 671, the House has held that Czecho-Slovak Foreign Exchange Law No. 92 of 1946 effectively prevented the plaintiff from obtaining delivery of securities admittedly belonging to him and held by a bank in London. "It is plain," says Lord Radcliffe, at p. 639, "that we are dealing with an anomalous set of circumstances when the person who is the sole beneficial owner of property cannot obtain the aid of the law to recover its possession." The decision of the Court of Appeal in *Kahler's* case was affirmed by a majority; that in *Frankman's* unanimously reversed.

Let it not be assumed from the fact that both actions ultimately failed that the House has had resort to some overriding rule of law which sufficed to decide both cases and which may serve as an invariable criterion in all other similar matters. It is a lesson which comes slowly to many practitioners that no case is an authority binding in any other merely because of a similarity of subject-matter. *Kahler* v. *Midland Bank, Ltd.*, was in some ways a more complex case than *Frankman's*. It was specifically held in the Court of Appeal and the House of Lords that there was no contractual relationship between Mr. Kahler and the defendants whom he sued. The latter held the plaintiff's securities as bailees of an intermediate party not joined in the proceedings, the Bohemian Bank. Mr. Frankman, on the other hand, could and did rely on the express terms of a contract between his predecessor in title, the original depositor of the securities, and the defendant bank, and it was on the language of the documents constituting that contract that the decision depended (see *per* Lord Simonds, at p. 672). No absent third party was here concerned.

Nevertheless two propositions of law are common to both decisions:—

(1) All the learned lords (the same five heard both appeals) are agreed that the recognition of the Czecho-Slovak law mentioned above (which forbids the transfer without the consent of the Czech National Bank of foreign securities from or to a Czech resident) as applying to the transactions before them did not involve the enforcement, contrary to the established practice of our courts, of a revenue or penal law of another country. Lord Simonds would not exclude the possibility of refusing recognition to a law which was in reality confiscatory, but he sees no reason for such refusal in the case of a law "which does not appear to differ in material respects from the legislation contemplated by the Bretton Woods Agreement which is now part of the law of this country."

(2) The crux of each decision may be said to be the question, long familiar in the English conflict of laws, what is the proper law of a particular contract.

True that in *Kahler's* case (with which we will deal first) the contract was, as we have said above, not between plaintiff and defendant. The plaintiff's substantive claim was discussed in the House of Lords as a claim in detinue (*per* Lord Radcliffe, at p. 641). As the absolute owner of the securities, he claimed the immediate delivery of his own property. But in answer to this claim the defendants argued that he was not entitled to immediate possession of the securities. In other words they set up a defect in the plaintiff's

title to immediate possession and so brought under consideration the contract by which he had agreed that the Bohemian Bank should hold the shares in safe custody for him.

All the noble and learned lords agreed that there was such a contract. The dissent of Lords MacDermott and Reid arose upon a consideration of its terms. The facts on this part of the case were that the shares which had originally been bailed by the plaintiff with the Zivnostenska Bank under a contract made in Prague were compulsorily transferred on the German occupation of Czecho-Slovakia, along with the plaintiff's banking account, to the Bohemian Bank, which the Germans controlled. The plaintiff was in 1939 forced to execute a so-called agreement with the Bohemian Bank as a condition of being allowed to leave Czecho-Slovakia, and all the indications are that that document would have been treated by the House as void, having been obtained under duress, had not the plaintiff by an amendment to his pleadings adopted and ratified the transfer in such a way as to preclude his contending that it was invalid. In eliciting the terms of the contract of bailment which was to be implied from this ratification of the transfer to the Bohemian Bank, the House was, as Lord Simonds said, in a region of artificiality. It seemed to Lord Simonds that "alleging no other terms as between himself and that bank than had formerly obtained between himself and the Zivnostenska Bank, the [plaintiff] is driven to the admission that he is in the same position, no better and no worse, as he would be in if no transfer had taken place." Lord Normand and Lord Radcliffe agreed in substance with this view, and further that the parties intended the law of Czecho-Slovakia to govern the contracts of bailment both original (with Zivnostenska) and substituted (with the Bohemian Bank). This intention, of course, satisfied the ultimate test in determining the proper law of a contract.

The effect was that the contract of bailment on which the plaintiff's title to immediate possession of the securities depended was so far modified by its proper law (that of Czecho-Slovakia) as to make the consent of the Czech National Bank a condition precedent, as Lord Radcliffe puts it (at p. 641). Accordingly the claim in detinue failed.

The contract in *Frankman's* case, which, as we have already said, subsisted in this instance between the plaintiff and the defendants themselves, contained two express conditions which were said to bear on the question of the proper law of the contract. Condition 11 provided that unless the customer ordered the transmission of the securities at his own risk and expense they were to remain deposited with the bank's correspondent, where they were to be "subject to the legal measures of the respective country." By Condition 50 the place of performance in respect of all obligations resulting from the "business connection" with the bank was to be considered to be the place of that department of the bank's establishment which had carried out the relevant transaction with the customer. The securities in fact remained deposited at the London branch of the bank; the transaction had been carried out by the bank's head office in Prague. Were Conditions 11 and 50, then, contradictory? The Court of Appeal had resolved the difficulty in these words of Lord Goddard, C.J.: "The contract of purchase was undoubtedly governed by Czecho-Slovak law, but thereafter the bank, in fulfilment of their mandate, were holding by their branch or department in London these debentures for safe custody. I think that thereupon the debentures became subject to English law."

This solution did not find favour in the House of Lords. "I think," says Lord Simonds, at p. 674, "that it clearly emerges from these conditions, made, it is to be remembered, between a bank in Prague and a Czechoslovakian citizen then resident at Trautenau, that first and last the law of the contract was Czecho-Slovakian law." The *lex loci contractus* and (by Condition 50) the *lex loci solutionis* were both that of Czecho-Slovakia. Condition 11 was not regarded by any of their lordships who made speeches to the House as importing that English law was the proper law of the contract. It was a reminder from the bank to the customer that if the customer chose to leave his securities lying abroad, they would be subject to the hazards of the local law of the place of their deposit (*per* Lord Reid, at p. 683).

In the result the proper law was Czecho-Slovak law, under which, as decided in *Kahler's* case, re-delivery of the debentures was illegal without the consent of the Czech National Bank. That consent not being forthcoming, the action failed.

Both cases thus demonstrate that foreign legislation, provided it is not of a confiscatory nature, can effectively control property situate in England. We may perhaps point out, to avoid misunderstanding in the affairs of nations, that not only does the Czech legislation in question correspond with parts of own Exchange Control Act, but similar restrictions have been operative under Czecho-Slovak law since 1934.

J. F J.

Costs

CONVEYANCING SCALES: WHEN APPLICABLE—VI

BEFORE examining the provisions of Sched. I, Pt. 2, in so far as they relate to leases not at a rack rent, we must notice that r. 2 of the rules applicable to that schedule provides that where a solicitor is concerned for both the lessor and the lessee, then he will charge the lessor's scale charge and one-half of the scale fee applicable to the lessee's solicitor. In short, a solicitor acting for both parties will charge one and one-quarter of the full scale fee. The rule is completely silent as to which party is to be charged with the full scale fee and which is to be charged with the quarter fee, but inasmuch as it is customary throughout the country for the lessee to pay the lessor's solicitor's charges this omission will make no practical difference for the result is that the lessee will pay the whole of the one and one-quarter scale fee. In those cases where it is agreed between the parties that each side shall bear its own solicitor's costs, then it is equitable to divide the one and one-quarter scale fee equally between the parties.

It will be noted that where another party, other than a lessor, joins in the lease, then the solicitor for the other party is entitled to his proper charges under Sched. II (see r. 4). On the other hand, where a mortgagee or a mortgagor joins in a lease then the solicitor for the lessor is to be entitled to an additional guinea (plus, of course, 50 per cent.) (see r. 3). It would seem to follow that where another party other than the lessor joins in the lease and is represented by the same solicitor as the lessor, then that solicitor would be entitled to charge some additional remuneration under Sched. II in addition to the scale fee for acting for the lessor. It is not, however, so provided by the rules.

Rule 5 of the rules provides that where a lease is partly in consideration of a premium and partly of a rent, then, in addition to the scale fee prescribed for the rent, the solicitor will be entitled to a further sum equal to the remuneration on a purchase at a price equal to such premium. Thus, if property is let for say fourteen years at an annual rent of £100 and a premium of £500, then the solicitor's remuneration will be calculated under Sched. I, Pt. 2 on the rent and under Sched. I, Pt. 1 as on a purchase at a price equal to the premium.

In a case such as this it will, of course, be a question of fact as to whether the rent reserved is a rack rent or not. *Prima facie*, it would seem that if a premium is charged in addition to the rent, then the rent cannot be a rack rent, but this does not necessarily follow. If it is in fact found that the rent is not a rack rent, then, in a case such as the one cited above where the lease is a short lease, Sched. I would not apply at all, and the whole of the solicitor's remuneration would have to be based on item charges under Sched. II.

If there is an assignment of an existing lease in consideration for a money payment and a covenant to pay the reserved

rent then the transaction is a sale and will be remunerated accordingly. In order that r. 5 may apply a lease must be created, the consideration for the creating of the lease being partly a rent and partly a premium.

The remuneration of the lessor's solicitor in such a case is quite clear from the wording of r. 5, but questions have arisen as to the proper remuneration of the lessee's solicitor. We have seen in a former article on this subject that although the note authorising the lessee's solicitor to charge one-half of the scale fee applicable to the lessor's solicitor appears at the end of the second scale, it must be deemed to apply to both the first and the second scales, and from this it may be inferred that the note refers to the whole of the remuneration to which the lessee's solicitor may be entitled. It follows, therefore, that if the lessor's solicitor is entitled, under r. 5, to remuneration based partly on a rent and partly on a premium, then the lessee's solicitor should be similarly remunerated, and, following the direction contained in the note at the end of the scales, will be entitled to one-half of the remuneration to which the lessor's solicitor is entitled.

Thus, in the case cited above, assuming that the rent is a rack rent notwithstanding that a premium is charged in addition to the rent, the remuneration of the lessor's solicitor will be £11 5s. in respect of the rent, together with £11 5s. in respect of the premium, a total of £22 10s ; and the lessee's solicitor would be entitled to one-half of this sum.

It will be noted that in order to entitle the solicitor to the remuneration under r. 5, it is not necessary for an abstract of title to be prepared or examined. This was made clear in the case of *Re Robson* (1890), 45 Ch. D. 71, where it was contended that because no abstract of title was delivered, then no remuneration was due under r. 5 in respect of the premium. North, J., disposed of this contention by pointing out that the rule did not state that the lessor's solicitor was to be remunerated as if the transaction was a purchase, in which case there would have been some ground for contending that an abstract must be prepared in order to entitle the lessor's solicitor to the additional remuneration under r. 5. His lordship observed that what the rule said was that in the case of a lease at a rent and a premium, the solicitor was to be remunerated by reference to a scale set out in some other part of the order. The purchaser's scale under Sched. I was to be regarded merely as a measure, and his lordship was further strengthened in this view by the fact that where, in the case of a lease, an abstract was furnished, then additional remuneration was provided by r. 1, over and above the remuneration provided by r. 5.

The second scale under Sched. I, Pt. 2, is expressed to relate to conveyances in fee or for any other freehold estate reserving rent, or building leases reserving rent or other leases for a term of thirty-five years or more not at a rack rent, except mining leases. The term " conveyance in fee reserving rent " is not difficult to construe, and it will be observed that whilst no remuneration is provided under the first scale in respect of a short lease not at a rack rent, it seems clear that such a lease could not be brought within the second scale by virtue of this term. The only short leases not at a rack rent which could be included in the second scale are building leases. These will come within the second scale by virtue of the fact that they are building leases whether they are for a short or a long term.

This fact was made clear by the Court of Appeal in the case of *Hillyard* v. *McDonald* [1917] 2 K.B. 248, where there was a lease for fourteen years at a rent of £150 per annum, the lessees covenanting to erect a cinema on the land. The land was agricultural land and the Court of Appeal found that the rent was a rack rent, but that the lease was excluded from the first scale under Sched. I by reason of the fact that it was a building lease. The lessees contended that the second scale could not apply because the words " or other long leases" confined the scale to building leases for a long period, but this argument was found by the Court of Appeal to be fallacious and it was held that the words really meant long leases other than building leases, with the result that any building lease, whatever its term, comes within the scale.

It follows from the above case that any lease, even at a rack rent, under which the lessee covenants to build is a building lease, and the remuneration in respect thereof will be calculated according to the second scale. The word " building " must be construed according to the ordinary meaning of the term, and it cannot be stretched to include a case where all that the lessee covenants to do is to repair. On the other hand, a covenant to expend money on improvements and alterations would make a lease a building lease (see *Re Kilkenny Corporation, ex parte Shortal* [1904] 1 Ir.R. 570).

The test as to whether a lease is a building lease or not is to determine whether the lessee covenants to place on the land some additional structure, as distinct from merely renovating or putting into a good state of repair an existing building already on the land.

Border line cases frequently occur and can only be determined on their merits. Thus, a lease might provide for the lessees to improve the premises, the improvement necessitating taking down and rebuilding on the existing foundations. This, it is submitted, is a building lease, and consequently the remuneration of the solicitors would be calculated according to Sched. I, Pt. 2, second scale, even if the rent reserved is a rack rent.

J. L. R. R.

A Conveyancer's Diary

THE COURT OF PROBATE AS A COURT OF CONSTRUCTION

An open conflict of jurisdiction between two Divisions of the High Court is very rarely possible nowadays, and perhaps the only case in which such a clash can occur at all results from the limited jurisdiction assumed by the Court of Probate to construe testamentary documents propounded to it. The principal duty of this court is to determine what documents should be admitted to probate, and in the ordinary way if there is then any doubt as to the meaning and effect of the documents, it is the duty of the Chancery Division of the High Court to construe them. But it is not the practice of the Probate Court to admit to probate every document which appears on its face to be a testamentary document, without any regard to the circumstances. Wills and codicils which have been wholly revoked, for example, are not ordinarily admitted to probate, nor are documents whose testamentary effect depended on a contingency which was never fulfilled. A not uncommon example of the latter is a will made in contemplation of marriage, which is usually drawn in such terms that it becomes effective only upon the solemnization of the testator's intended marriage within a specified period of its execution. It is obvious enough that in determining whether the event, contingently upon which the document was expressed to take effect, has or has not occurred, the Court of Probate must involve itself in some degree in the function of construing the will, if it is only to ascertain what the nature of the contingency in question was, and a similar problem arises when an appointment of personal representatives is made not absolutely, to take effect in any event, but contingently or conditionally.

As a result of this necessity a rule has grown up that the Court of Probate, while avoiding, so far as possible, any encroachment upon the jurisdiction of the Chancery Division, will attempt the duty of construing testamentary documents propounded to it for the limited purpose of determining what documents ought to be admitted to probate, and to whom administration should be granted (see *Re Thomas* [1939]

2 All E.R. 567, 572). In that case the testator and his wife made mutual wills by which each appointed the other sole executor and universal legatee. Some years later the testator added a properly attested codicil to his will, this codicil being in several paragraphs, the first of which started with the words: "If I survive my wife". There were several other paragraphs to this codicil which contained no reference at all to the contingency of the testator surviving his wife, and the question which arose was whether this contingency governed only the paragraph of the codicil in which it appeared, or whether it should be imported into the succeeding paragraphs of the codicil which disposed, substantially, of the testator's whole estate.

Now this was not a simple case, and it was urged that the most satisfactory course for the Court of Probate to adopt would be to admit the codicil as a whole to probate, as well as the will, and to leave it to the court principally concerned with the duties of construction to interpret the effect of the two testamentary instruments so admitted. In support of this argument the case of *Re Baker* [1929] 1 Ch. 668 was cited, where two wills and three codicils were all admitted to probate, despite the fact that the second will was expressed to be made in revocation of all previous testamentary dispositions, and the effect of these apparently contradictory dispositions was left to be ascertained by the Chancery Division. This argument did not prevail, and the will alone in *Re Thomas* was admitted to probate. Another example of a decision on the same lines is to be found in *In the Goods of Piazzi-Smyth* [1898] P. 7.

The inconvenience of this parallel jurisdiction of the Court of Probate to construe testamentary documents, however limited the purposes for which such construction is admissible, is considerable, because the Chancery Division has never held itself to be bound by any decisions on construction reached by the Court of Probate—see, for example, *Re Hawksley's Settlement* [1934] Ch. 384. Let us suppose that a codicil, expressed as subject to some obscurely worded contingency, confers a benefit on A, who is not one of the residuary legatees under the will, and that both the will and the codicil are properly signed and attested and so, *prima facie*, fulfil all the formal requirements of a valid testamentary disposition. When the codicil is propounded by A, it is in the interest of the residuary legatees to oppose its admission to probate on the ground that the contingency on which its effect is *ex hypothesi* dependent has not been fulfilled. If this argument is successful, the codicil is not admitted, and A's only remedy is to appeal against the decision of the Probate Court, at his own risk in the matter of costs. If, on the other hand, the codicil is admitted to probate along with the will, the doubt concerning the contingency upon the happening of which it is expressed to come into operation is not removed, upon the principle adopted in *Re Hawksley's Settlement, supra*, by the determination of the Court of Probate, but remains to found a construction summons in the Court of Chancery if any person still interested in depriving A of his benefit is minded to raise the point in the other court. A decision against the beneficiary upon the disputed instrument in the Court of Probate is fatal to A, unless he appeals, but with a decision in his favour he may still have to run the gauntlet of further proceedings in another Division.

The injustice is manifest, and the only satisfactory solution in these cases would be for the Court of Probate to admit all instruments which bear the outward marks of valid testamentary documents to probate, without regard to contingencies, and without making any attempt to construe their effect, wherever any person appears and satisfies the court that he has an interest in any document being admitted to probate, as was done in *Re Baker, supra*. Such a rule would not interfere with the present practice in any case where the question of construction before the court is of a simple nature, since it would be to nobody's interest to take out a construction summons in the Chancery Division in such a case, with the risk as to costs which futile proceedings always involve, and nobody would therefore appear before the Court of Probate to press the admission of the dubious instrument. Some slight difficulty may arise where the admission of several documents to probate results in what perhaps were intended as mutually incompatible appointments of personal representatives becoming simultaneously effective, but any inconvenience in this respect should not be allowed to outweigh the claims of a potential beneficiary who, under the present system, may see a substantial point of construction decided against him by a court which is not competent, and which has frequently renounced all claims to competence, to determine questions of construction.

* * * * *

In some remarks on the question of horizontal freeholds, which appeared in this Diary on the 5th November last (*ante*, p. 689), I observed that recent legislation had made the grant of long leases of portions of a house at a premium and a nominal rent unattractive. A reader has asked what legislation I had in mind when I made this observation. It was the Landlord and Tenant (Rent Control) Act, 1949. It is true that this Act does not subject to any form of control any premises which are not subject to the Rent and Mortgage Interest Restrictions Acts generally, and those Acts are not likely to apply to the type of house which it is worth subdividing into separate residences and, if they did *prima facie* apply to such premises as a whole, their effect on a letting at a nominal rent of part of the premises would seem to be obscure. It was not any single provision of this measure, therefore, which prompted the remark in question, but rather the principle (some would call it lack of principle) which prompted the Legislature to make some portions of this Act retrospective in effect. What has been done once may be repeated, and all the more easily because a precedent, of however dubious a kind, has now been set. A future rent control measure may include a demise of residential accommodation now outside the scope of any control, and I would not advise any transaction which may run that risk.

"ABC"

Landlord and Tenant Notebook

EFFECTS OF FRAUD AND ILLEGALITY

THE plaintiff in *Edler* v. *Auerbach* (1949), 93 SOL. J. 727, had been induced to accept a grant of a tenancy of part of a house by statements made to him by or on behalf of the defendant, his landlord, which were untrue. They were to the effect that the house had not been used for residential purposes since 31st December, 1938: for if so used since that date, Defence Regulation 68CA prohibits any use for other purposes unless the local housing authority consents thereto, and both parties contemplated the use of the demised premises as offices. The defendant sanctioned the removal of a bath by the plaintiff on his undertaking to replace it at the end of the tenancy and to make good damage occasioned; the tenancy agreement itself contained tenant's repairing covenants and one not to use the premises otherwise than as offices. Rent was made payable quarterly in advance, and when, before the first quarter was up, the housing authority became aware of, and taxed the parties with, the infringement, the plaintiff contended that the agreement was void and that he was entitled to the return of the first payment, though the only administrative action taken was one designed to prevent further conversions. He withheld further payments and by the time the tenancy (if any) had been determined by notice to quit, one year's rent was (or would be) owing by him.

The plaintiff asked for a declaration that the tenancy was void for illegality, alleging that he had been induced to accept it by representations which were untrue, but not

alleging that they were made with knowledge of their untruth; and he claimed the return of the rent paid. (He also sued for breach of warranty of fitness: see *ante*, p. 731.) The defendant filed a counter-claim in which he claimed the unpaid rent, damages for breaches of the repairing covenants, and damages for failure to make good the damage occasioned by the removal of the bath. In the course of the hearing it transpired (the court not being asked to exclude the evidence which established the fact) that the representations had been made fraudulently. The court was thus called upon to consider the effects of fraud (*North-Western Salt Co., Ltd.* v. *Electrolytic Alkali Co., Ltd.* [1914] A.C. 461, showed that a court ought to dismiss a claim which it found to be unenforceable, whether pleadings raised the issue or not) and of illegality.

But, while satisfied that the misrepresentation was not one made innocently, Devlin, J., held that, the tenancy agreement having been concluded, the remedy of rescission was not available to the plaintiff, considering that *Angel* v. *Jay* [1911] 1 K.B. 666, decided this point.

The reports available do not suggest that any attempt was made to distinguish between a tenancy agreement under hand and a lease under seal in this connection. I do not suggest that the result would have been different but in *Angel* v. *Jay*, which arose out of an innocent misrepresentation about the condition of drains made in the course of negotiations, the claim was for the rescission of the lease accepted on its strength, and that lease was under seal. Also, all but one (*Hindle* v. *Brown* (1907), 98 L.T. 44—pictures misrepresented by auctioneer) of the half-dozen or so authorities cited on the landlord's behalf concerned transactions under seal. The tenant's arguments sought to exploit the difference between leases and sales, rather than that between parol agreements and deeds, it being urged that in contrast to the latter the former left a number of continuing obligations in existence and were therefore essentially executory rather than executed contracts. The judgments negatived this, and that of Darling, J., was certainly wide enough in its language to support the proposition that form is not a vital consideration: " here there had been completion, the plaintiff *had gone into possession under the lease*, and nothing remained to be done "; Bucknill, J.'s observations may be considered neutral.

In so far as the claim was based on illegality, it was pointed out that illegality did not appear on the face of the transaction and that there was no absolute prohibition of change of user; the housing authority might consent. And the contention that the illegal object would make the agreement void or voidable went further than the authorities showed. In *Alexander* v. *Rayson* [1936] 1 K.B. 169 (C.A.), the plaintiff landlord and defendant tenant had co-operated in deceiving an uncritical rating authority about the value of a flat, the means adopted being the execution of separate documents, one of which (produced to the assessment committee) recorded the letting of a flat and an undertaking to provide services in consideration of a rent of £450 a year, while the other (not so produced) merely provided for (practically the same) services in consideration of payments amounting to £750. These facts were held not in any way to affect the validity of the lease. Claims to recover the quarter's rent which had been paid on the grounds of mistake, failure of the consideration, and as money had and received to the plaintiff's use likewise failed. Failure of consideration: the answer was payment under a valid lease. Mistake of fact: the payment was not made because the plaintiff was mistaken about the premises' history, but because the lease obliged him to make it. Money had and received: if the plaintiff had alleged the fraud which had been proved he would have succeeded; but the relief was not available in a case of innocent misrepresentation, the case he had put forward.

But further distinctions were found to exist when the counter-claim came under consideration. *Alexander* v. *Rayson*, *supra*, is very clear authority for the proposition that a party in the position of the defendant would not be allowed to enforce the terms of the agreement; consequently, the whole of the claim for arrears of rent failed. The same applied to the claim for damages for disrepair. But the agreement to make good damage occasioned by the removal of the bath was held not to be tainted.

It was in fact agreed that the last-mentioned claim was one which arose independently of the lease, and I do not think that any of the older cases has gone very deeply into the distinction. The principle appears to be that a court of justice will not assist a party to enforce a tenancy agreement if the object be illegal, but this unwillingness does not extend to a collateral agreement, though that agreement would not have been negotiated if the tenancy agreement had not been negotiated. The distinction between rights conferred by a contract and purely proprietary rights has been recognised by other branches of the law, including at least one branch which affects landlord and tenant: the Law of Distress Amendment Act, 1908, s. 4, excluded from the protection which it gave to third parties goods " comprised in a hire-purchase agreement "; in *Jay's Furnishing Co.* v. *Brand and Co.* [1915] 1 K.B. 458 (C.A.), the exclusion was held to apply because the particular agreement gave the owners a contractual right to the return of the goods hired; but a judicial hint (Phillimore, L.J.'s: " I do not say that by apt words furnishing companies might not accomplish . . .") resulted in the drafting of the form of agreement adjudicated upon in *Smart Bros.* v. *Holt* [1929] 2 K.B. 303, in which the distrainor failed to establish his claim because the goods were no longer comprised in the agreement.

It is, of course, not only comparatively unimportant collateral agreements which may figure in such questions; the possibility of a landlord not being able to recover possession at all had not been mooted because, when the term comes to an end, the landlord, or rather ex-landlord, does not have to rely on the lease in order to recover his property (cf. *Whitstable U.D.C.* v. *Tritton* [1941] 3 All E.R. 405, deciding that " leave to proceed " is not necessary in such cases). But is a landlord, who has granted a long lease for an illegal purpose, compelled to allow the tenant to enjoy the property rent free till the term expires? This question was touched upon in the leading case on illegality in landlord and tenant matters, *Gas Light and Coke Co.* v. *Turner* (1839), 5 Bing. (N.C.) 666; (1840), 6 Bing (N.C.) 324, an action for rent brought in the sixth year of a 21-year lease which was defeated when it was shown that the property was, to the landlords' knowledge, to be used for a purpose which infringed a Building Act in that the common intention was that the tenant should draw oil of turpentine in prohibited quantities. The point whether the defendant would be able to continue in possession for the residue of the term without paying any rent was, as Tindal, C.J., observed, not before the court; but the learned chief justice went on to say: ". . . it is obvious that, if an ejectment should be brought upon the breach of any condition in the lease, the action of ejectment would, at all events, be free from the objection that the court was lending its aid to enforce a contract in violation of law." In the Exchequer Chamber, Parke, B., left the point severely alone. Nor did it arise either in *Alexander* v. *Rayson* or in *Edler* v. *Auerbach*. In the one the tenant had had enough of the flat and in the other had himself given notice to quit, the tenancy being a periodic one. But the suggestion appears to be that a forfeiture clause or—perhaps it would be particularly appropriate to give it its older name—a proviso for re-entry, including one operating in the event of rent default, could be invoked; such can be regarded as a limitation of the grant of the estate rather than as the term of a contract. If there were no forfeiture clause, the position of a landlord who has let for an illegal purpose would, as regards rent, appear to be hopeless while the term lasts; as regards repair, I would suggest that he could rely to some extent on the action of waste which, as was decided by *Defries* v. *Milne* [1913] 1 Ch. 98, sounds in tort and not in contract.

R. B.

Mr. P. R. WATKINS, prosecuting solicitor for Southport Corporation, has been appointed to a similar position with Bradford Corporation.

Mr. R. W. WILLIAMS, M.P., solicitor, has been appointed a member of the Commission of Inquiry into the recent disorders in Nigeria.

HERE AND THERE

ROYAL FAVOUR

THE legal quarter has lately been basking to an extent quite unprecedented in the rays of royal favour. Towards the end of Michaelmas Dining Term at the Inner Temple, Grand Night was marked by the presence of His Majesty the King at dinner in the Niblett Hall. A golden snuff-box presented by him to the Society to mark this his year as Treasurer of the Society was handed round the table and permission to smoke was granted by him in response to the traditional formula of inquiry, on this occasion posed by the junior Bencher, in the words: "Your Majesty, the Treasurer, have twenty minutes elapsed?"—relic of a long-established compromise arrived at when it was only just beginning to be admitted that smoking (once so strictly segregated an indulgence) might after all mix with fine drinking; first the faithful apostles of one enjoyment at a time were allowed their brief unclouded minutes, then as the years rolled on and habits changed and diners unanimously yearned for their cigars, the Treasurer assumed power arbitrarily to deem the time to have passed. Perhaps Lewis Carroll had something to do with it. You remember that other festive board in Wonderland where Alice was told that if you keep on good terms with Time, "he'd do almost anything you liked with the clock. For instance, if it were 9 o'clock in the morning, just time to begin lessons, you'd only have to whisper a hint to Time and round goes the clock in a twinkling! Half-past one, time for dinner." In the establishment next door Her Majesty the Queen, Treasurer for this year of the Middle Temple, has been zealously performing her duties, social and ceremonial, reopening the restored Hall, dining with her fellow Benchers, paying a call on the Inns of Court Regiment in Lincoln's Inn, planting a tree in the Temple Gardens and graciously engaging the gardener in conversation. It is, by the way, just over four years ago that Her Majesty Queen Mary, as senior Bencher of Lincoln's Inn, planted a walnut tree there in commemoration of the centenary of the opening of the new Hall and Library. She is, of course, an enthusiast for gardens (witness her achievements at Frogmore) and on that occasion the vigour of her spadesmanship created universal admiration.

THE PRINCESS ON THE BENCH

JUST lately, too, Princess Margaret has given renewed evidence of a flattering interest in the ways of lawyers, coming to the Strand to study the faunae in their habitat and natural surroundings. Appropriately she chose the court of the Lord Chief Justice, beside whom she sat on the Bench and who entertained her to luncheon during the adjournment. Though the case in the list provided no heavy gladiatorial displays by eminent "silks," it compensated for the lack of drama by a certain entertainment value. The action of the barman against the Savoy Hotel, involving allegations of slander, assault and false imprisonment, had decidedly the elements of a social document involving stimulating, suggestive and in many little ways practical to diners-out, useful peeps at the human world behind and below the superhumanly stately façade of the profession of metropolitan hospitality. The Princess is reported to have said once of another stately national institution that it gave her a chance to see "life in the raw." Perhaps the Law Courts can sometimes provide an alternative insight. Earlier in the year Princess Margaret, accompanying Princess Elizabeth, paid a visit to the Old Bailey during a trial for attempted murder, Lord Goddard then also presiding. If (as we may justly hope) the grand tour of Law-land will continue, the Court of Appeal and the House of Lords may look forward to the unaccustomed brightness of a like visitation. Nor can the time be very remote when the Princesses, according to royal custom, will themselves become Benchers of an Inn of Court. Will either and which of them seek the grave dignity of Lincoln's Inn or share the more easy-going geniality of Gray's Inn?

GROUNDING THE AIR FORCE

THE case of Croom-Johnson, J., and the grounded air force does not seem to have proceeded as far as open conflict, with Maidstone as the seat of war. The commanding officer of the airfield was summoned by the judge to answer for the movements of the offending planes. He came "for courtesy." He referred the matter to higher authority, after which, no doubt, discussions proceeded at diplomatic level. Something similar, I believe, happened a year or two ago while the same learned judge was holding the assizes at Lincoln. Opinion in the profession was somewhat uncertain what would have happened had matters proceeded to extremes, but the prevailing impression seemed to be that Croom-Johnson, J., whose talent for arranging matters in his court according to his liking is well known, would certainly not have moved as he did without being very sure of his ground. Undoubtedly a judge has full jurisdiction to safeguard the proceedings in his court from interruption. Undoubtedly if a plane had flown round and round the assize court at Maidstone in such a way as to interfere with the hearing of the cases the judge need not have sat helplessly on the Bench (his arm could lawfully stretch into the upper air). Nor does anyone seem to doubt that if the officer responsible had been committed to prison on the judge's order it would have been beyond the constitutional power of any other authority to let him out again. The judges of England have never taken very kindly to the idea that laws must be silent amid the clash of arms or the roar of airplanes. The late Wrottesley, L.J., when he was judge of assize at Bristol during the war once had to deal with the case of a telegram sent to the commanding officer of an aircraftman required as a witness: "Imperative leave Dunster extended. Case will probably not be reached till Thursday." Reply: "Imperative Dunster returns. War between England and Germany." But the judge did keep the man. Charles, J., at the Worcester Assizes, once clashed with the air force when, on binding over an aircraftman on condition that he should not drive for seven years, he was told that the military authorities took no notice of civil suspensions. "I don't care tuppence what the practice of the army is," he said. "In this case, whatever the army or the air force choose to do about it, this boy, if found driving, will be brought before the civil court and I shall give him eighteen months' imprisonment." In England, at any rate, justice still carries a heavy enough armament to out-gun any opponent likely to mount a direct attack. The danger is from the sap and mine of the insidious legislator.

RICHARD ROE.

OBITUARY

MR. W. ARCHER THOMSON

Mr. William Archer Thomson, senior partner of Merriman, White & Co., of Temple, E.C.4, died at Woking on 24th November, aged 83. He was admitted in 1887.

MR. H. P. GAMON

Mr. Humphrey Percival Gamon, solicitor, of Chester, died on 21st November, aged 68. He was senior diocesan registrar at Chester and was also registrar of the archdeaconries of Chester and Macclesfield. He was admitted in 1903.

MR. G. M. GREEN

Mr. G. M. Green, solicitor, an Assistant Controller of Death Duties at the Estate Duty Office and author of a leading text-book on the death duties, died on 22nd November.

MR. D. F. JACKSON

Mr. Donald F. Jackson, solicitor, of King's Lynn, died on 9th November, aged 81. He had been Lynn district coroner since 1915 and was President of the Cambridgeshire and District Law Society in 1942. He was admitted in 1891.

MR. W. H. LAWS

Mr. William Henry Laws, for 62 years with Messrs. Clayton, Sons & Fargus, of Bedford Square, W.C.1, latterly as managing clerk, died at Woking on 21st November, aged 80.

MR. H. B. HANN

Mr. Harold Brown Hann, solicitor, of Cardiff, died on 19th November, at the age of 66. He was admitted in 1906.

MR. R. ROBERTS

Mr. Richard Roberts, solicitor, of Pontypridd, died on 19th November, aged 71. He was admitted in 1906.

MR. C. M. WILSON

Mr. Colin McClure Wilson, solicitor, of Wells, Somerset, died recently. He was admitted in 1898.

MR. W. J. WORDEN

Mr. William John Worden, solicitor, of Birkdale, died on 21st November, aged 89. He was for 37 years clerk to the county magistrates of Southport Petty Sessional Division, and was admitted in 1882.

NOTES OF CASES

COURT OF APPEAL

NEGLIGENCE: INFLAMMABLE MATERIAL DELIVERED AT WRONG ADDRESS

Philco Radio & Television Corporation of Great Britain, Ltd. *v.* J. Spurling, Ltd.

Tucker, Singleton and Jenkins, L.JJ.
8th November, 1949

Appeal from Jones, J. (93 SOL. J. 358).

The defendants collected five wooden cases of cellulose film scrap in their lorry, which their carman, by mistake, delivered at the plaintiffs' factory instead of at the premises of another company in the same road about 150 yards away. One of the cases was opened by the plaintiffs' servants, who examined the contents. They were repacking the case when a typist employed by the plaintiffs touched a piece of the scrap with the glowing end of a cigarette. That act caused a serious explosion and fire broke out in the plaintiffs' factory. The plaintiffs sued the defendants in negligence, contending that the defendants were negligent in failing to keep the scrap safely, in failing to deliver it to the correct consignees, and in failing to give any warning as to its dangerous character. The defendants denied that they had been negligent and contended that the fire had been caused by the negligence of the plaintiffs or their servants. They pleaded, alternatively, that it was caused by the deliberate act of the typist, and that the damage alleged was too remote to be recoverable in law. Jones, J., gave judgment for the plaintiffs and the defendants appealed.

TUCKER, L.J., said that it was not disputed that the defendants were negligent in delivering that highly inflammable material at the wrong address, without any warning or indication of the contents of the package, or of their dangerous nature. It was argued for the defendants that the damage was due to a *novus actus interveniens* consisting of the typist's conscious act of volition in setting light to the material. It was argued for the plaintiffs that the burden was on the defendants of establishing a *novus actus interveniens* which would relieve them of liability for the consequences of their negligence, and that what had happened, taken at its worst against the plaintiffs, did not constitute a *novus actus interveniens* within the principle stated by Lord Dunedin in *Dominion Natural Gas Co.* v. *Collins* [1909] A.C. 640, at p. 646. Questions of causation and *novus actus interveniens* were always difficult, and the present case was rather on the border line. Here it was the duty of the defendants not to deliver the dangerous and inflammable material at the plaintiffs' address without giving any warning of the danger, and in such circumstances that damage might result from some mischievous or foolish act by some person on the plaintiffs' premises. That mischievous or foolish act could be accidental or intentional. Here it was not established that the typist knew or appreciated the nature or qualities of the particular substance or that a violent conflagration would inevitably result from setting it alight. That she knew that it would burn was, however, established. Therefore, although he (his lordship) would assume that there was sufficient evidence that what the typist had done was not merely accidental, he nevertheless thought Jones, J., to have been right in his conclusion that the typist's behaviour was not such a conscious act of volition as relieved the defendants from liability for their negligence. The judge had properly applied the test laid down by Lord Dunedin and the appeal should be dismissed.

SINGLETON and JENKINS, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *Aiken Watson*, K.C., and *Colin Duncan* (*Stafford Clark & Co.*); *Glyn-Jones*, K.C., *Ryder Richardson* and *Anthony Durnford* (*Gardiner & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

INCOME TAX: INVESTMENT COMPANY: "EXPENSES OF MANAGEMENT"

Capital and National Trust, Ltd. *v.* Golder

Tucker, Singleton and Jenkins, L.JJ.
16th November, 1949

Appeal from a decision of Croom-Johnson, J. (93 SOL. J. 466), on a case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

The appellant investment trust company's business consisted in the making of investments, from which the principal part of their income was derived. They claimed, under s. 33 of the Income Tax Act, 1918, repayment of income tax paid for the year ending 5th April, 1948, on sums disbursed as expenses of management for the year. Those expenses included sums in respect of brokerage and stamp duty paid when a change was made in the company's investments with a view to maintaining their income. By s. 33 (1), where a company like the appellants "proves to the . . . special commissioners that, for any year of assessment, it has been charged tax . . . and has not been charged in respect of its profits in accordance with the rules applicable to Case I of Schedule D, the company . . ." shall be entitled to repayment of so much of the tax paid as is equal to the amount of the tax on any sums disbursed as expenses of management (including commissions) for that year. The Commissioners were of opinion that charges for brokerage and stamp duty necessarily incurred in a purchase or sale of shares did not constitute "expenses of management," and rejected the company's claim. Croom-Johnson, J., held that the expenses in question were not expenses of management. The company now appealed.

TUCKER, L.J., said that the Special Commissioners had found that the sums paid by the company in respect of brokerage and stamp duty, when purchasing an investment, constituted an integral part of the purchase price. The word "integral" was not perhaps the happiest word which they might have used, but those sums were necessarily expended when an investment was purchased. Even though they were expenses incurred by the management in carrying out the business of the company, it did not necessarily follow that they constituted "expenses of management" within the meaning of s. 33 of the Act of 1918. The appeal would be dismissed.

SINGLETON and JENKINS, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *Grant*, K.C., and *Heyworth Talbot*, K.C. (*Linklaters & Paines*); *Donovan*, K.C., and *Hills* (*Solicitor of Inland Revenue*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

REVENUE: STAMP DUTY: EXEMPTION

Attorney-General *v.* London Stadiums, Ltd.

Tucker, Singleton and Jenkins, L.JJ.
17th November, 1949

Appeal from Lord Goddard, C.J. (93 SOL. J. 483; 65 T.L.R. 458).

The defendants, London Stadiums, Ltd., were incorporated on 29th April, 1946, with a nominal capital of £100, divided into 1,000 shares of two shillings each. The object of the company's formation was that it should acquire and amalgamate the undertakings of three companies owning greyhound racing tracks. The capital of the defendant company was then increased to £750,000, and of its resulting 7,500,000 two shilling shares, 7,480,000 were allotted to the three companies in payment for the acquisition of their undertakings. The agreement of amalgamation was presented for adjudication of stamp duty to the Inland Revenue Commissioners who granted relief under s. 55 (1) of the Finance Act, 1927, but subject to s. 55 (6). The effect of that subsection was that if the three companies should within two years of the defendant company's increase of capital "cease to be the beneficial owner of the shares" issued to them by the defendant company, the exemption would be forfeited and the Crown could reclaim the unpaid stamp duty from the defendant company. On 5th November, 1946, the three companies sold to a firm of stockbrokers a total of 2,000,000 of the one shilling shares, into which part of the two shilling shares had been sub-divided, and the stockbrokers shortly afterwards sold the shares to the public. The Inland Revenue Commissioners thereupon brought this action against the defendants by the Attorney-General, under s. 55 (6), claiming the amount of the stamp duty which had been excused. The issue now came for trial, as a preliminary point of law, set down under R.S.C., Ord. XXV, r. 2, whether, on the true construction of the subsection, the defendants were liable to make the payment claimed. Lord Goddard, C.J., held that they were, and they now appealed.

TUCKER, L.J., said that, without speculation on what the Legislature had really set out to achieve by s. 55 (6) of the Finance Act, 1927, it was clear from the structure of the section that it intended to preserve the *status quo* for two years after an amalgamation. If in those two years there were any alteration of the *status quo*, the provision for repayment would become effective. To give the words any other meaning would make that provision nugatory, for, by retaining only one share, a company could get the benefit of it. A pleader might have added to the words

" beneficial owner of the shares so issued " " or any of them," but such an addition was unnecessary.

SINGLETON and JENKINS, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *Tucker*, K.C., and *John Clements* (*Kenneth Brown, Baker, Baker*); *Pennycuick*, K.C., and *J. H. Stamp* (*Solicitor of Inland Revenue*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

SHOP: CUSTOMER'S FALL

Turner *v.* Arding & Hobbs, Ltd.

Lord Goddard, C.J. 8th November, 1949

Action.

While the plaintiff was buying goods in the food department of the defendants' shop she stepped on to a piece of vegetable matter which was lying on the tiled floor, slipped and fell, and sustained serious injuries in respect of which she now sued. It was contended for her that while an invitee on the defendants' premises, she had met with an unusual danger of which the defendants were, or ought to have been, aware, and that the burden was on them of showing that they had taken reasonable care to prevent that danger from arising and that they should be held liable on the principles in *Indermaur* v. *Dames* (1866), L.R. 1 C.P. 274, and *Stowell* v. *Railway Executive* [1949] 2 K.B. 519; 93 SOL. J. 540. It was argued for the defendants that they were not insurers of the safety of invitees on their premises, that their only duty was to take reasonable care, that there was no evidence that they had caused or permitted the piece of vegetable matter to be on the floor, and that there were many ways in which it could have fallen there without any negligence on their part.

LORD GODDARD, C.J., said that the accident had not happened when the shop was crowded with customers, but at a slack time. It was the duty of the defendants to see that their floors were kept reasonably safe, and the burden of proof was on them to show that they had done so. In fact they had given no explanation how the vegetable matter came to be on the floor. They had not discharged the burden which was on them of showing that they had taken all reasonable care. Judgment for the plaintiff for £450.

Stay of execution granted because of the importance of the case to all shopkeepers.

APPEARANCES: *Berryman*, K.C., and *F. G. Paterson* (*R. I. Lewis and Co.*); *Ryder Richardson* (*Gardiner and Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHARTERPARTY: CHANGE OF DISCHARGING BERTH

Anglo-Danubian Transport Co., Ltd. *v.* Minister of Food

Devlin, J. 25th November, 1949

Action.

The defendant Minister chartered the plaintiffs' ship to carry a cargo of potatoes. The charterparty provided that the vessel should go to Rotterdam and there load a full and complete cargo of potatoes, with which she should sail to Tyne-Plymouth range as ordered, one port only in charterer's option, and there deliver her cargo. Freight was payable according to the Chamber of Shipping schedule, which stipulated: " Above bridges Thames plus 2s. 3d. per ton." On leaving Rotterdam the ship was ordered by the charterer's agents to London, New Hibernia Wharf, which was just above London Bridge. On her arrival off that wharf the charterer ordered her to discharge at Hay's Dock, because New Hibernia Wharf was occupied by other craft. Hay's Dock was just below London Bridge. The ship discharged at Hay's Dock and her owners claimed damages in lieu of freight at the " above bridges " rate, on the ground that New Hibernia Wharf was above bridges. The charterer contended that that rate was not applicable because the ship had in fact been discharged at Hay's Dock, which was below bridges.

DEVLIN, J., said the authorities showed that if a charterer were given an express right to nominate the discharging berth, a nomination once made had to be treated as if it had been written into the charterparty. It was conceded for the charterer that there could be no difference in principle if, as in the present case, that right were implied. He (his lordship) agreed that the concession was rightly made. To permit the charterer to alter a nomination once made would be to allow a unilateral variation of the charterparty. The shipowners were entitled to succeed. Judgment for the plaintiffs.

APPEARANCES: *M. Holman* (*Holman, Fenwick & Willan*); *E. W. Roskill* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

DIVORCE: SECURITY FOR COSTS

Luff *v.* Luff

Barnard, J. 26th October, 1949

Summons adjourned into open court.

The registrar directed a husband to find security for costs in the sum of £75, the estimated cost of the matrimonial proceedings between husband and wife. The wife had deposited £35 with her solicitors on account of costs. The registrar did not take that fact into account. The husband contended on the appeal that he should have done so.

BARNARD, J., said that the wife, referring to *Allen* v. *Allen* [1894] P. 134, argued that the £35 should be regarded as part of her separate income, and was properly disregarded by the registrar. The case cited was of no help here. The Court of Appeal there refused to reverse an order that the husband should give security for costs, because to reverse it would be to flout an order which had been made that the husband should pay the wife £500 a year alimony pending suit though she had an income of £280 a year of her own. But for the statement before the court here that the £35 had been actually paid by the wife to her solicitors towards the expenses of this suit, and if the court had merely been told that she had in hand £35 or some other sum, he (his lordship) would have been very loth to interfere with what the registrar had done because he would be quite entitled to take that figure into account and none the less say that the husband ought to find the security to the full extent. The registrar had not, however, really acted in accordance with the well-known principles to be applied in these matters. The position was made clear by Hill, J., in *Williams* v. *Williams* [1929] P. 114, at p. 118, where he said that the main object of security was that justice might be done by the wife's being enabled to procure the assistance of solicitor and counsel and come to court. So far as the £35 went the solicitor was in pocket to that extent towards presenting her case. Therefore, the proper order to make in the circumstances, as the registrar had estimated that the total costs would be £75, was that the husband should find security for the balance of £40. Registrar's order varied.

APPEARANCES: *Merrylees* (*Rhys Roberts & Co.*); *Stranger Jones* (*Martin Baker*, Harrow).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL

PROOF OF PREVIOUS CONVICTIONS: CONVICTION IN NORTHERN IRELAND

R. *v.* Murphy

Lord Goddard, C.J., Hilbery and Lynskey, JJ.
31st October, 1949

Appeal against conviction and sentence.

The appellant was convicted of garage breaking and sentenced by the Recorder of Cambridge to four years' imprisonment. Although he would otherwise have been a proper subject for preventive detention, as he had at least twenty previous convictions, the Recorder did not impose that form of sentence because the notice served on the appellant under s. 23 (1) of the Criminal Justice Act, 1948, of intention to prove three previous convictions included one in Northern Ireland, which the Recorder considered that he was not entitled to take into account as qualifying for preventive detention. The Recorder added *per incuriam* that the same would apply to a conviction in Scotland. By s. 80 (2) of the Act of 1948: " . . . any such reference to a previous conviction or sentence shall be construed as a reference to a previous conviction by a court in any part of Great Britain and to a previous sentence passed by any such court."

LORD GODDARD, C.J., giving the judgment of the court, said that Northern Ireland was not part of Great Britain, but was part of the United Kingdom of Great Britain and Northern Ireland. The combined kingdoms of England and Scotland had been designated Great Britain by the Act of Union passed in the reign of Queen Anne, and ever since then the two kingdoms had been known as Great Britain. The United Kingdom was first brought into being when the Act of Union with Ireland was passed in 1800. Therefore, for the purpose of the previous convictions which it was necessary to prove under s. 23 (1), a conviction in Northern Ireland would not suffice. The court had no doubt that a conviction and sentence in Scotland could be proved. Section 21 referred to convictions on indictment, but must include convictions in Scotland of offences other than offences dealt with by

magistrates. Such technicalities, as that the term "indictment" was not used in Scotland, did not limit the operation of s. 80 (2). Leave to appeal had been granted to enable the court to point out this difference with regard to Scotland and Northern Ireland. A conviction in Ireland could not be proved any more than could a conviction in South Africa or one of the other dominions or colonies, or even in a foreign country. It was worth mentioning that a conviction before a court martial could not be proved for this purpose. Appeal dismissed on the merits.

APPEARANCES: *Bain (the Registrar, Court of Criminal Appeal)*; *Hawke* and *Garth Moore (Director of Public Prosecutions)*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 24th November:—

Aberdeen Harbour Order Confirmation
Agricultural Holdings (Scotland)
Civil Aviation
Coast Protection
Docking and Nicking of Horses
Expiring Laws Continuance
House of Commons (Redistribution of Seats)
Iron and Steel
London County Council (General Powers)
Marriage
New Forest
Nurses
Overseas Resources Development
Profits Tax
Representation of the People

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time:—

Public Works Loans Bill [H.C.]	[23rd November.
War Damaged Sites Bill [H.C.]	[22nd November.

Read Second Time:—

Air Corporations Bill [H.L.]	[22nd November.
Election Commissioners Bill [H.L.]	[22nd November.
Local Government Boundary Commission (Dissolution) Bill [H.C.]	[24th November.

Read Third Time:—

British North America (No. 2) Bill [H.L.]	[22nd November.
Law Reform (Miscellaneous Provisions) Bill [H.C.]	[24th November.
National Parks and Access to the Countryside Bill [H.C.]	[24th November.
Patents Bill [H.L.]	[23rd November.
Registered Designs Bill [H.L.]	[23rd November.
Vehicles (Excise) Bill [H.L.]	[23rd November.

In Committee:—

Telegraph Bill [H.C.]	[24th November.

B. DEBATES

The debate on Lord Llewellin's motion calling attention to the working of the **Town and Country Planning Act, 1947,** was continued by LORD MESTON. He thought that the opening words of s. 69 were constitutionally objectionable. They provided, in effect, that there should be paid to the Central Land Board a development charge of such amount (if any) as the Board might determine. It was remarkable to pass an Act imposing a tax which was indefinite in amount, liable to fluctuation and generally incapable of ascertainment with precision. Section 60 (3), which provided that no payment for depreciation of land value should be made where the depreciation was below a certain minimum, also caused him some anxiety. His lordship quoted from Central Land Board Pamphlet S.1.A, and argued that the method of aggregation described in it and not contained in the Act could be used to defeat compensation claims altogether.

LORD HALIFAX thought that the principle that no individual should reap a benefit of increased value which he had done nothing to create was established in the political field irrespective of party, and if the Act had contented itself with that, half the complications which were at present embarrassing the country would have been avoided. What most people had thought was the main object of the Act could have been achieved if it had been confined to the appropriation of development rights on undeveloped land, including agricultural land, and such control as was required and would have been adequate over the further development or the important change of user of developed land under existing planning and housing Acts.

VISCOUNT BUCKMASTER said that he had no quarrel with the purpose of the Act, but he thought the Government, as a result of this Act, were now lost in a legislative maze from which there would be no escape. He submitted that in built-up areas it was impossible to assess the value of the claims for loss of development value. Each building required separate assessment and there were many factors to be taken into account in planning, zoning, restrictive covenants, rights to light, etc., which made an accurate assessment almost impossible. LORD CLYDESMUIR thought that if the intention of the Act was to plan our towns and country properly and to avoid the mistakes of the past, we could have nothing but praise for it; but the part of the Act dealing with development charge was working out as pure taxation and was not assisting development, but slowing it up. Lord Clydesmuir took a particularly serious view of the wide latitude given to the district valuers; they were given the difficult and distasteful task of bargaining in an almost oriental manner quite alien to the normal practice in this country.

In replying to the debate, the LORD CHANCELLOR said that the pre-war planning system had completely broken down, and that the Coalition Government had come to substantially the same conclusions as had the present Government. The debate was supposed to have been on the administration of the Act, but nine-tenths of the discussion had been on the Act itself. He would look into all the specific cases which had been cited, but there were certain principles essential to any planning Act. First of all, you had to treat the man who was refused permission to develop, the man who was given permission to develop, and the man who had his property compulsorily acquired, on the same basis. The refusal or the granting of permission to develop should be based on public grounds. You should not, by refusing permission to develop, penalise a man; and equally, by granting him permission to develop, you should not allow him to reap large rewards. To achieve this there had to be a system, and their system was that they based themselves upon existing use value, and they considered the existing use value of property and its value with permission to develop it. If you were going to give one man the right to develop you must exact a development charge in order not to differentiate his case from that of the unfortunate man to whom, on some public ground, you refused the right to develop and whom you sent away with nothing. Having done this, you compensated everyone who had lost development rights out of the global sum.

He believed that this scheme was right. It was very true that there had been delays, but whether these were due to undue elasticity or undue rigidity he was not sure. The figures given earlier by Lord MacDonald did not suggest that the Central Land Board were "trying to exact the uttermost farthing." He believed they were trying to be fair and that by and large they had succeeded. It was not true to say that the Act was impeding development. Unfortunately, our financial position was such that we could not build anything like so much as we would wish. Moreover, as a result of an invitation sent out last autumn, the Central Land Board had received 11,000 applications from people who said they were having difficulty in obtaining land at existing use value. Of these many had not the slightest chance of getting a building licence for many years to come; and in only eleven cases did the Board find it desirable for them to use their powers to secure the land at existing use value.

With regard to "higgling," the development charge did have something of a tax about it, but it also had some of the attributes of a sale. He was not so foolish as to imagine that in this short period a perfect system could have been evolved, and alterations would be made, whether in administration or by legislation, if the Government came to the conclusion that they were necessary. LORD LLEWELLIN thanked the Lord Chancellor and said he hoped his inquiries would result in something being done. The motion was withdrawn. [16th November.

The Report Stage of the **Law Reform (Miscellaneous Provisions) Bill** opened with LORD LLEWELLIN moving three amendments directed to the same point. As the Bill stood at present, he said, cl. 1, which gave the High Court jurisdiction in divorce proceedings by a wife who had been resident in England for three years, notwithstanding that her husband might be domiciled abroad, applied also to proceedings under s. 8 of the Matrimonial

Causes Act, 1937, for a decree of presumption of death and dissolution of marriage. Until a recent decision it had been assumed that jurisdiction in such cases would be dependent upon the petitioner being domiciled here at the date of commencement of the proceedings. But in the recent case of *Wall* v. *Wall* it was held that the court's jurisdiction in such cases was dependent only on the residence of the petitioner. This had caused difficulty in Scotland because the Court of Session had held that domicile was necessary. In order to avoid the risk that decrees pronounced here might not be recognised in Scotland, the new subsection would make the basis of jurisdiction the same in both countries. The LORD CHANCELLOR said that the President of the Divorce Division had considered these matters and was in agreement with the amendments, which were then agreed to.

Next, LORD LLEWELLIN moved a new subsection to cl. 1 to make clear what law was to be applied by a court where it assumed jurisdiction under cl. 1 of the Bill, or s. 13 of the Matrimonial Causes Act, 1937, or s. 1 of the Matrimonial Causes (War Marriages) Act, 1944. In all these cases it was possible for the court to have jurisdiction in divorce proceedings although the parties might not be domiciled here. Before 1937 this had been impossible. The court had had jurisdiction only if the parties had been domiciled here, and accordingly it had applied English law without having to decide whether it did so because it was the law of the parties' domicile or the law of the court in which the proceedings were taken. The new clause provided that the issues should be determined in accordance with " the law which would be applicable thereto if both parties were domiciled in England at the time of the proceedings." This was the view expressed by all the leading text-book writers and by the President of the Divorce Division, who had given great help in regard to this clause. There had, nevertheless, been some doubt on the point, which was now set at rest.

A new proviso was inserted into cl. 6 (Power to vary orders for maintenance in the event of remarriage) to meet the objections of LORD MERRIMAN at an earlier stage of the Bill. The new provision states that, with regard to orders made under subs. (1) of s. 190 of the Supreme Court of Judicature (Consolidation) Act, 1925, for secured maintenance, the powers conferred by cl. 6 should not be exercised except where the court was satisfied that it was a case of exceptional hardship which could not be met by the discharge, variation or suspension of an order for unsecured maintenance. [23rd November.

The passage of the **Justices of the Peace Bill** through the House of Lords concluded with the addition of a number of amendments, most of them non-controversial, and inserted as a result of discussions during the earlier stages of the Bill. The figure of 20,000 instead of 25,000 was inserted as the minimum head of population for a separate commission of the peace. LORD LLEWELLIN said this amendment would save Bridgwater, Deal, Grantham and Newark, Penzance, Pontefract and Windsor. LORD SCHUSTER said he was instructed by the Lord Chief Justice to say that he accepted this amendment. LORD ROCHE also welcomed this amendment as a middle way. It reduced the number of these minor jurisdictions, but would also act in due relief of quarter sessions.

Provision was made that justices' clerks, since they did not achieve that post at an early age, should retire at seventy and not sixty-five as provided by the Local Government Superannuation Act, 1937. (An exception is made where clerks have completed forty years' pensionable service before seventy.) A new subsection to cl. 22 provides that the salary payable under the Bill shall take due regard of any additional duties imposed on the clerk by s. 20 and of any remuneration formerly payable to him in respect of the duties so imposed on him. It was also provided that where staff are employed under local Acts by the justices, such employment should be deemed to be employment by the justices' clerk for purposes of s. 22. The office of clerk of accounts for the Staffordshire stipendiary districts will, as a result of a further amendment, be abolished by the Act.

Following a recommendation of the Roche Committee, a new clause was inserted giving local authorities the duty of making good the defalcations of the justices' clerk in failing to pay over any fees, fines, etc. Power is given to insure against this liability and to charge the premiums against the pool of fees and fines.

VISCOUNT SIMON welcomed an amendment providing that a stipendiary magistrate shall not be removed except on the Lord Chancellor's recommendation. Our whole judicial system depended on the principle that a judicial officer should not be capable of removal by the Executive because the Executive did not like what he did. Provision was also made that the stipendiary magistrate for Salford should continue to be recommended to the King by the Chancellor of the Duchy of Lancaster and also removable on the like recommendation. The power to appoint a paid Chairman or Deputy-Chairman for the County of London Sessions was moved from the Home Secretary to the Lord Chancellor, and power was given to the Lord Chancellor to appoint Deputy-Recorders under s. 168 of the Municipal Corporations Act, 1882.

As Faversham loses its court of quarter sessions under the Bill and would fall under the control of the coroner of Dover (because it is one of the Cinque Ports), a clause was inserted to prevent this happening. Provision was further made that where the chairman of a court of quarter sessions was unwilling to be a member of a magistrates' courts committee the deputy-chairman should take his place thereon. [15th November.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

Armed Forces (Housing Loans) Bill [H.C.] [24th November.

To provide money for the provision of housing accommodation in Great Britain for married persons serving in or employed in connection with the Armed Forces of the Crown and for other purposes connected therewith.

Read Second Time :—

Electoral Registers Bill [H.C.] [22nd November.

Festival of Britain (Supplementary Provisions) Bill [H.C.] [23rd November.

Parliament Square (Improvements) Bill [H.C.] [23rd November.

Read Third Time :—

Charity of Walter Stanley in West Bromwich Bill [H.C.] [25th November.

Distribution of German Enemy Property Bill [H.C.] [25th November.

B. QUESTIONS

In reply to a question as to what action he was taking as a result of the appeal to him to stop the closure of underground bakeries in London, the MINISTER OF FOOD stated that the approval of such establishments was within the discretion of local authorities under s. 54 of the Factories Act, 1937, which was administered by the Minister of Labour, and there was a right of appeal to a court of summary jurisdiction. He himself had no *locus standi* in the matter unless supplies of bread and flour confectionery were jeopardised, and he had no information that that was so. [21st November.

Mr. MICHAEL STEWART stated that fees paid to date to British counsel acting as Judge Advocate and Prosecutor in war crimes trials by British military courts amounted to £16,400 and £7,700 respectively. Payments to British counsel in connection with the early conduct of the trial of Field-Marshal von Manstein amounted to £1,700. [21st November.

Mr. A. V. ALEXANDER stated that following the decision to postpone the operation of certain sections of the Legal Aid and Advice Act, the question of continuing the existing scheme of legal aid in the Forces, which had been due to come to an end next year, was being examined. [23rd November.

Mr. J. EDWARDS stated that the number of summonses so far issued against firms which had failed to make the required returns for the Census of Production under the Statistics of Trade Act, 1947, was thirty. The Statutory Instrument prescribing the matters about which information may be required was the Census of Production (1949) (Returns and Exempted Persons) Order, 1948. [23rd November.

Mr. CHUTER EDE said that the penalties under the existing law for the unlawful possession of firearms, and, in particular, for the possession of firearms to facilitate the commission of criminal offences, were already severe. He had no reason to think that such use of firearms was increasing and he did not think the increase of penalties would have any beneficial effect. [24th November.

Sir THOMAS MOORE asked whether the Home Secretary would take steps to revise the scale of punishments which compelled magistrates' courts to administer a comparatively long term of imprisonment as an alternative to a comparatively small fine. Mr. CHUTER EDE said there was no general provision compelling such courts to impose a minimum term of imprisonment in default of payment of a fine. The law provided for maximum periods which, subject to certain safeguards, might be fixed in

default of payment, and it was for the court to decide what was the appropriate period to satisfy the justice of the case, subject to the maximum prescribed. [24th November.

STATUTORY INSTRUMENTS

Agriculture (Maximum Area of Pasture) (Scotland) Order, 1949.
Bacon (Rationing) (Amendment No. 2) Order, 1949. (S.I. 1949 No. 2119.)
Bread Boards (Revocation) Order, 1949. (S.I. 1949 No. 2135.)
Draft **Calf Rearing** Subsidy Scheme (Extension and Payment) (Scotland) Order, 1949.
Canning of Food and Feeding Stuffs (Amendment) Order, 1949. (S.I. 1949 No. 2133.)
Civil Defence (Ambulance) Regulations, 1949. (S.I. 1949 No. 2146.)
Civil Defence (Burial) Regulations, 1949. (S.I. 1949 No. 2145.)
Civil Defence (Burial) (Scotland) Regulations, 1949. (S.I. 1949 No. 2139 (S147).)
Civil Defence (Evacuation and Care of the Homeless) Regulations, 1949. (S.I. 1949 No. 2147.)
Civil Defence (Evacuation and Care of the Homeless) (Scotland) Regulations, 1949. (S.I. 1949 No. 2140 (S148).)
Civil Defence (Fire Services) Regulations, 1949. (S.I. 1949 No. 2120.)
Civil Defence (Hospital Service) Regulations, 1949. (S.I. 1949 No. 2148.)
Civil Defence (Hospital Service) (Scotland) Regulations, 1949. (S.I. 1949 No. 2141 (S149).)
Civil Defence (Public Protection) Regulations, 1949. (S.I. 1949 No. 2121.)
Civil Defence (Public Protection) (London) Regulations, 1949. (S.I. 1949 No. 2122.)
Civil Defence (Sewerage) Regulations, 1949. (S.I. 1949 No. 2149.)
Civil Defence (Sewerage) (Scotland) Regulations, 1949. (S.I. 1949 No. 2138 (S146).)
Civil Defence (Water Supplies) Regulations, 1949. (S.I. 1949 No. 2150.)
Civil Defence (Water Supplies) (Scotland) Regulations, 1949. (S.I. 1949 No. 2137 (S145).)
Clothing Industry Development Council Order, 1949. (S.I. 1949 No. 2124.)
County Court Districts Order, 1949. (S.I. 1949 No. 2058 (L.23).)
As to this Order, see *ante*, p. 747.
Electric Lighting (Isolated Areas) (Scotland) Licence, 1949. (S.I. 1949 No. 2158.)
Federated Superannuation System for Universities (Temporary Service) (Amendment) Regulations, 1949. (S.I. 1949 No. 2116.)
Gas (Conversion Date) (No. 8) Order, 1949. (S.I. 1949 No. 2113.)
Gas (Meter) (Amendment) Regulations, 1949. (S.I. 1949 No. 2157.)
Import Duties (Drawback) (No. 13) Order, 1949. (S.I. 1949 No. 2109.)
Import Duties (Drawback) (No. 14) Order, 1949. (S.I. 1949 No. 2110.)
Import Duties (Drawback) (No. 15) Order, 1949. (S.I. 1949 No. 2111.)
Import Duties (Drawback) (No. 16) Order, 1949. (S.I. 1949 No. 2112.)
Jute Yarn (Prices) (Amendment No. 2) Order, 1949. (S.I. 1949 No. 2127.)
London Traffic (Prescribed Routes) (No. 28) Regulations, 1949. (S.I. 1949 No. 2104.)
London Traffic (Prescribed Routes) (No. 29) Regulations, 1949. (S.I. 1949 No. 2125.)
Movement of Poultry Carcases from Orkney Islands (Revocation) Order, 1949. (S.I. 1949 No. 2117.)
Pensions Appeal Tribunals (England and Wales) (Amendment) Rules, 1949. (S.I. 1949 No. 2105 (L.27).)
As to these Rules, see *ante*, p. 746.
Retention of Cable under Highways (Wiltshire) (No. 13) Order, 1949. (S.I. 1949 No. 2132.)
Retention of Pipe under Highway (Wiltshire) (No. 12) Order, 1949. (S.I. 1949 No. 2142.)
Safeguarding of Industries (Exemption) (No. 8) Order, 1949. (S.I. 1949 No. 2123.)
Stevenage Development Corporation Water Order, 1949. (S.I. 1949 No. 2131.)
Stopping up of Highways (Bedfordshire) (No. 1) Order, 1949. (S.I. 1949 No. 2130.)
Superannuation (Civil Service and Isle of Man Service) Rules, 1949. (S.I. 1949 No. 2115.)
Superannuation (Governors of Dominions, etc.) Rules, 1949. (S.I. 1949 No. 2114.)
Ware Potatoes (Amendment) Order, 1949. (S.I. 1949 No. 2134.)
Draft **Wool** Textile Industry Development Council Order, 1949.

BOOKS RECEIVED

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Freedom under the Law. The Hamlyn Lectures, First Series. By The Rt. Hon. Sir ALFRED DENNING, one of the Lords Justices of His Majesty's Court of Appeal in England. 1949. pp. viii and 126. London: Stevens & Sons, Ltd. 8s. net.

A Summary of the Law of Torts or Wrongs Independent of Contract. By Sir ARTHUR UNDERHILL, M.A., LL.D., of Lincoln's Inn, Barrister-at-Law. Sixteenth Edition by RALPH SUTTON, K.C., M.A., a Bencher of Lincoln's Inn, and BARRY SHEEN, M.A., of the Middle Temple and South-Eastern Circuit, Barrister-at-Law. 1949. pp. civ, 412 and (Index) 37. London: Butterworth & Co. (Publishers), Ltd. 25s. net.

Five Hundred Points in Club Law and Procedure. By R. S. CHAPMAN. Twelfth Edition. 1949. pp. (with Index) 184. London: The Working Men's Club and Institute, Ltd. 4s. 10d. net.

Fifty Forensic Fables. By "O." 1949. pp. x and (with Index) 213. London: Butterworth & Co. (Publishers), Ltd. 10s. 6d. net.

Compulsory Purchase of Land. By A. J. W. JEFFERY, D.P.A., A.C.I.S., Clerk of the Wolverton Urban District Council. 1949. pp. xx and (with Index) 145. Leigh-on-Sea: The Thames Bank Publishing Co., Ltd.

Simon's Income Tax. Service Issue No. 4. Vol. 4, New Pages; Vol. 5, Supplementary Index; Service Volume, New Pages. 1949. London: Butterworth & Co. (Publishers), Ltd.

Merlin on the Landlord and Tenant Act, 1927. Third Edition. By S. P. J. MERLIN, of Gray's Inn and the Middle Temple, Barrister-at-Law, and G. AVGHERINOS, of the Middle Temple, Barrister-at-Law. 1949. pp. xiii and (with Index) 192. London: Law Notes Lending Library, Ltd. 22s. 6d. net.

The National Assistance Act, 1948. Reprinted from Butterworth's Annotated Legislation Service. With a General Introduction and Annotations by R. D. STEELE, B.A., Solicitor of the Supreme Court. 1949. pp. vi (with Index) 156 and (Supplement) 32. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

Index to Local and Personal Acts. Consisting of Classified Lists of the Local and Personal and Private Acts and Special Orders and Special Procedure Orders, 1801–1947. Prepared in the Statutory Publications Office by Direction of the Statute Law Committee. 1949. pp. viii and 1,140. London: H.M. Stationery Office. 63s. net.

The Complete Law of Town and Country Planning. By H. A. HILL, M.A., of Gray's Inn, Barrister-at-Law. Fourth Edition. 1949. pp. lxxvii, 1,309 and (Index) 61. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. 85s. net.

Guide to Practical Conveyancing. For Solicitors and their Clerks. By EDWARD MOERAN, Solicitor of the Supreme Court. 1949. pp. ix and (with Index) 78. London: Sir Isaac Pitman & Sons, Ltd. 7s. 6d. net.

Legal Decisions Affecting Bankers. Vol. 4, 1924–36. Issued under the sanction of the Council of the Institute of Bankers. Edited and Annotated by JAMES WYLIE, C.B.E., of the Inner Temple, Barrister-at-Law. 1949. pp. xiv and (with Index) 505. London: Blades, East & Blades, Ltd. 6s. 6d. net.

NOTES AND NEWS

Honours and Appointments

Mr. JAMES LOMANS, assistant solicitor to Dewsbury Corporation since March, 1948, has been appointed assistant solicitor to Durham County Council, and will begin his new duties in January.

The following appointments are announced in the Colonial Legal Service: Mr. M. J. E. Gow to be Registrar of the High Court, Nyasaland; Mr. W. D. F. MURRAY to be Resident Magistrate, Tanganyika; and Mr. A. G. FORBES (Legal Draftsman, Federation of Malaya) to be Solicitor-General, Northern Rhodesia.

Personal Notes

Mr. W. Pepperell Pitt, solicitor, recently addressed the West of England branch of the Incorporated Accountants' Students' Society at Bristol on "Contracts for the Sale of Real Property."

Lieut.-Col. Frank K. Windeatt, D.L., T.D., clerk to Totnes (Devon) Magistrates, has just completed fifty years in the clerkship. His father, Mr. T. W. Windeatt, held the office for thirty years before him.

Fifty years' service as honorary solicitors to Preston Traders Mutual Association and Preston Chamber of Trade was celebrated on Thursday night, 24th November, at the Bull and Royal Hotel, Preston, by a dinner given by the solicitors, Messrs. Smith, Fazackerley & Ashton, to the past-presidents, officers and committee of the chamber. A short toast list was spoken to by the president of the chamber (Mr. Wilkinson), Mr. Henry Fazackerley, Mr. A. L. Ashton, Mr. Arnold Horner, J.P., and Mr. Arthur Winter. The toast-master was Mr. George Moss. Gifts of silver cigarette boxes, suitably inscribed and filled, were made by the chamber's officers and members to Mr. Fazackerley and Mr. Ashton.

A memorial service to the late Sir Douglas T. Garrett was held at St. Michael's Church, Cornhill, on 29th November.

Miscellaneous

WAR-DAMAGE CLAIMS AGAINST ITALY, HUNGARY, ROUMANIA AND BULGARIA

For the information of British owners of property in Italy, Hungary, Roumania or Bulgaria, who have in the past stated that they wished to make a claim under the Peace Treaties in respect of war loss of, or damage to, their property in those territories but who have not, as yet, completed the relevant claim forms, it is announced that His Majesty's Government are unable to maintain indefinitely the facilities at present provided for the channelling of such claims to the foreign government concerned. Accordingly, an owner wishing to make a claim who has not yet sent a completed claim form to Administration of Enemy Property Department, 32 Warwick Street, London, W.1, should do so before 31st March, 1950, if he wishes His Majesty's Government to present the claim officially on his behalf.

British property owners who have suffered war loss or damage to their property in any of those territories, and have as yet taken no steps to claim compensation under the Peace Treaties, should, if they wish to make use of the facilities described above, write immediately to A.E.P.D. for the appropriate claim forms and explanatory notes.

The right of claimants themselves to make a compensation claim direct to the foreign government concerned remains unaffected by the withdrawal of the facilities hitherto provided.

Board of Trade,
London, S.W.1.
23rd November, 1949.

SUPREME COURT. CHRISTMAS VACATION, 1949

Notice is hereby given that an Order has been made under Rules 6 and 9 of Order LXIII closing the offices of the Supreme Court from Saturday the 24th December to Tuesday the 27th December, 1949, inclusive. The Order does not apply to the District Registries of the High Court, each of which will be closed on the same days as the local County Court Office. (See Order LXIII, Rule 10.)

Wills and Bequests

Mr. Frederick Gowen, solicitor, of Croydon, left £17,629.

Mr. Robert Kidd Whitaker, solicitor, of Accrington, left £21,813. He left £100 each to his friends Edmund Balmer (managing clerk for Messrs. Whitaker and Pratt, at Haslingden) and James Ormerod (managing clerk at the firm's Accrington office) as a token and recognition of valued and faithful service over many years.

SOCIETIES

Lord Justice Cohen has succeeded the late Lord du Parcq as Chairman of the SOCIETY OF COMPARATIVE LEGISLATION. Mr. St. Laurent, Prime Minister of Canada, and Mr. Justice Sandström, of Sweden, have accepted invitations to become members of the Council as well as Professor David and M. Ancel, representing the French Society of Comparative Legislation. The Committee have appointed an Honorary Treasurer and Mr. John Cohen has accepted the position.

The annual dinner of the SOCIETY OF CLERKS OF THE PEACE OF COUNTIES AND OF CLERKS OF COUNTY COUNCILS took place on 23rd November, at Claridges Hotel. Mr. H. G. Thornley, Chairman of the Society, presided. Among those present were: the Duke of Norfolk, the Duke of Wellington, the Marquess of Exeter, Earl Peel, Viscount Ridley, Viscount Leverhulme, Lord Cromwell, Lord Llewellin, Mr. Justice Hilbery, Mr. Justice Vaisey, Mr. Justice Wynn Parry, Sir Edward Bridges, Sir William Douglas, Sir Thomas Sheepshanks, Sir Frank Newsam, and Sir John Wrigley.

The annual dinner of the YORKSHIRE LAW SOCIETY was held in the Merchant Adventurers' Hall, York, on 11th November. Lieut.-Col. H. I. Shaftoe, Vice-President, presided in the absence, through illness, of Mr. J. C. Peters, the President. Among the guests were Mr. Justice Stable and Mr. T. G. Lund, C.B.E., Secretary of The Law Society. In proposing the toast of the Yorkshire Law Society, Mr. Lund said he believed that in these days there was a greater need than there had been since the foundation of the Yorkshire Society in 1786 for the preservation of a high standard of morals, and in his view the only way in which that standard would be restored would be by the example set by the learned professions and particularly by the legal profession. Speaking of the Yorkshire Law Society, he said it had maintained a great reputation for integrity.

The debates of the UNITED LAW SOCIETY, on 14th and 21st November, 1949, were on constitutional issues. On 14th November, Mr. A. J. Pratt proposed "That this House is in favour of single chamber government" and confined his remarks to the British Commonwealth and to America. He took the stand that the continued existence of a second non-elected chamber of government is unnecessary, undesirable and undemocratic. Mr. S. A. Redfern opposed the motion, pointing out the value of the second chamber as a scrutinising and revising body. There also spoke Dr. T. Kemp Homer, Messrs. C. H. Pritchard, S. E. Redfern, D. N. Keating and C. F. Walker. The motion was lost by eleven votes to two with some abstentions. On 21st November the issue was "That this House disapproves of the increasing tendency to confer judicial powers on Government officials." It was proposed by Mr. L. G. Cullen, who deplored the creation of tribunals other than the recognised courts of law and criticised in particular tribunals under the Town and Country Planning Act, 1947, and those created by the Furnished Houses (Rent Control) Act, 1946, describing the powers given to the latter by the Landlord and Tenant (Rent Control) Act, 1949, as unpardonable, particularly where they encroach on the jurisdiction of the county courts. Mr. J. C. Knight opposed the motion on the grounds that such tribunals were necessary because of the expert knowledge required, and suspicion of the way in which officials exercised their powers is completely unwarranted. Messrs J. N. Collins, O. T. Hill, I. Tarjan and A. Garfitt, also spoke and the motion was carried by five votes.

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